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Before the

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**FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate Future	)	RM-8117, RM-8030
Development of SMR Systems in the	)	RM-8029
800 MHz Frequency Band	)	
	)	
and	)	
	)	
Implementation of Section 309(j) of the	)	PP Docket No. 93-253
Communications Act - Competitive	)	
Bidding	)	
800 MHz SMR	)	

To: The Commission

REPLY COMMENTS

James A. Kay, Jr. (Kay) hereby replies in the above captioned rule making and states his strong opposition to MTA based licensing, forced frequency relocation, and auctions of SMR spectrum. None of these proposals will reap any benefit for the public or existing operators; and each will result in chaos and devastation without any resulting promise of a new, accepted telecommunications service.

Frequency Swapping Is Not Feasible

Kay opposes forced frequency swapping for the same reasons that such opposition has been voiced by many commenting parties, see, e.g. Comments of SMR Won. This proposal suggests that such trading of spectrum is possible and desirable. It is neither. Instead, the premise that adequate, suitable spectrum exists has not and cannot be proven

by any commenting party. For example, Nextel has stated that such swapping occur, but has provided no factual support for its contention that might demonstrate that such activity is possible. It is apparent to all analog operators that such activity would be horrible for each's business, including down time, equipment changes, re-engineering, redrafting of site leases, and adverse impacts on the good will of each burdened operator. It should not escape the Commission's notice that Nextel has also not shown how it would pay for the enormous costs associated with such a plan. The Commission must remember that the proposal cannot be adopted with the idea that the entire matter can be accomplished with a pocketful of crystals and a hearty "good luck."

For these reasons, Kay must strongly object to this proposal and implores the Commission to reject this proposal as the cornerstone to the disastrous tomorrow envisioned in Nextel's comments -- a future wherein a single operator exists in each of the top fifty major markets and where competition is so reduced as to be almost nonexistent. That lack of competition would first be fully demonstrated at the proposed auctions, where the Commission would enjoy the company of a single bidder, Nextel, for almost all of the MTA licenses.

#### Small Business Would Suffer from Auctions

For many of the same reasons outlined above, Kay strongly opposes the auctioning of SMR spectrum. Again, the yardstick for regulation behind this proposal is the depth of pocket rather than the depth of commitment. Analog operators who have

steadfastly sold service to the public for years, but who have not sold stock to that same public, are at an unfair disadvantage. Small business suffers for concentrating on fulfilling its duty as Commission licensees, rather than focusing its attention on mega-mergers, stock sales, leveraged buy-outs and the like. At present, the regulations base the acquisition of additional spectrum on the past performance of the operator in increasing its offerings of service. Under the Nextel proposal, the matter is not based on the provision of service, but it is instead based on considerations of equity, which have nothing to do with fundamental fairness.

If the Commission had a legitimate complaint about the manner in which spectrum has been allocated to analog operators, this proposal might have some credence. But such a complaint is without basis. Abuses of the Commission's licensing methods have not been the result of actions taken by analog operators, but rather by boiler room operations which have no connection to legitimate analog operations. Kay applauds any efforts taken by the Commission to remove the taint on the industry and the Commission's processes caused by such persons. However, Kay strongly opposes any efforts which are an attempt to solve the problem by penalizing the analog operators, to the singular benefit of Nextel.

If Nextel is sincere in its desire to obtain spectrum via purchasing methods such as paying the Commission for certain advantages, why not simply direct Nextel toward the market and invite it to engage in arms length negotiations with analog operators? In

this manner, analog operators would, at least, be presented with fair offers. Nextel's efforts in this proceeding are an obvious attempt to avoid the bargaining table and the costs associated therewith. Instead, Nextel would have the Commission give them assets at devalued prices which have no basis in the market. The Commission should quickly reject Nextel's attempts to abuse the Commission and its authority in this manner. The Commission should not be used like a gun pointed at the head of legitimate operators, with an "or else" tone.

#### Promoting Competition

None of the proposals put forth can logically be found to be an encouragement of competition in the marketplace and none of Nextel's justifications within its comments support such a finding. Accordingly, if the Commission is motivated by an attempt to increase competition in the telecommunications marketplace, the Commission should summarily reject these proposals as fully anticompetitive. As further illustration, the following is noted:

1. The Nextel proposal advocates a single operator in each of the top fifty major markets which would hold up to 200 channels of SMR spectrum. The concentration of this level of SMR spectrum within the possession of a single licensee, employing automatic methods of grant by fiat, cannot be found to be a promotion of competition.

2. The Nextel comments support MTA-wide licensing of the above-mentioned spectrum, which would curtail, if not terminate, the growth of all analog SMR systems within market areas. Accordingly, competition from these sources would be greatly reduced.

3. Nextel suggests that its proposals will provide for alternative technologies which will provide competing services to the market. However, Nextel's sole supplier of technology and major stockholder is Motorola, which will be the sole source of technology for over seventy percent of the SMR marketplace if the proposals are adopted. It stretches credulity to propose, much less accept, that such a market situation will encourage competitive services. In fact, such an environment will be detrimental to the other equipment suppliers and will discourage their participation in bringing new technological services to the market.

4. It requires little imagination to envision the numerous auctions wherein Nextel would be the single bidder. The blocks would be of little use to anyone else, given Nextel's market dominance. Accordingly, the Commission may not expect to find a competitive environment at its proposed auctions.

5. Nextel's comments continue to suggest that ESMR services will compete with cellular, even though this position has been disavowed by Nextel in the

press. It has become apparent that these promises of competitive services were greatly exaggerated and the illusion of such competition should not provide a basis for Commission action herein.

6. The adoption of forced frequency swapping will so chill and preoccupy analog operators as to set back growth efforts and increased service offerings for years. Therefore, even a robust operator who participates vigorously in local competition will require many months to recover from adoption of this proposal, thereby greatly reducing each operator's ability to compete in the marketplace.

It is, therefore, incumbent on the Commission to honestly conclude that adoption of the proposals will not enhance competition. The contrary is obviously and painfully true. For these reasons, the Commission should simply reject the proposals and maintain the equal playing field that exists in the market today, albeit with the formidable advantages already enjoyed by Nextel. Granting greater advantages to Nextel will not promote competition. It will merely promote an increasing perception of callousness for the rights and requirements of the smallest operators in the industry.

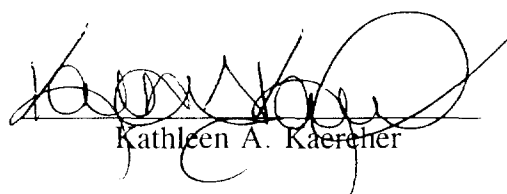
### Conclusion

For the reasons stated herein, Kay opposes the proposals contained within the Further Notice of Proposed Rule Making and respectfully requests that they be

summarily rejected as detrimental to the interests of analog SMR operators and the consuming public.

Respectfully submitted,  
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By



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Dated: March 1, 1995

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I hereby certify that on this first day of March, 1995, I served a copy of the foregoing Reply Comments on the following by placing a copy in the United States Mail, first class postage prepaid:

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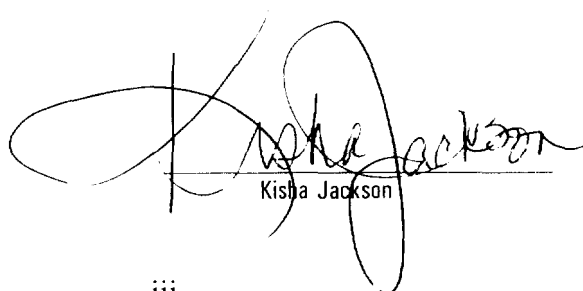
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